

THE JACOB D. FUCHSBERG LAW FIRM, LLP

3 PARK AVENUE, SUITE 3700
NEW YORK, NEW YORK 10016
TEL: (212) 869-3500
FAX: (212) 398-1532
www.fuchsberg.com

ALAN L. FUCHSBERG
BRADLEY S. ZIMMERMAN*
ELI A. FUCHSBERG*

JACOB D. FUCHSBERG
(1913-1995)

KEITH H. GROSS
JOSEPH LANNI*
SHANNON MONTGOMERY*
CHRISTOPHER NYBERG*
WALTER OSUNA*
NEAL BHUSHAN*
JAEHYUN OH*

ROSALIND FUCHSBERG KAUFMAN
COUNSEL EMERITUS

RIKKI B. DASCAL
CELENA GONZALEZ
HARDEEP SHERGILL
KEVIN LEE

KATHLEEN KETTLES
ANTHONY PAGAN
OF COUNSEL

*ALSO ADMITTED IN NEW JERSEY
^ ALSO ADMITTED IN CALIFORNIA

November 15, 2023

VIA ECF

Hon. Arun Subramanian, United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Courtroom 15A
New York, NY 10007

Re: Mariko Shinagawa, et al. v. United States of America, et. al.
Civil Action No. 1:22-cv-10173

Dear Judge Subramanian:

We are submitting this letter motion on behalf of, and with the consent of, all parties to respectfully request an extension of the outstanding discovery deadlines in this medical malpractice case in which Plaintiffs allege that infant plaintiff K.D.S. and plaintiff Mariko Shinagawa were injured during the birth and delivery process and/or post-partum period, as a result of the negligence and/or departures from the standard of care by Defendants.

On April 21, 2023, the Court entered an initial Civil Case Management Plan and Scheduling Order that set August 21, 2023, as the deadline for all fact discovery and October 10, 2023, as the deadline for all expert discovery. *See* ECF No. 65. Since then, the parties have been working diligently on fact discovery. However, the parties sought additional time to complete discovery because Defendants had served approximately 40 providers with requests for records, and many of those providers needed to be re-served because they had moved offices, or their records had to be sought from third parties. In addition, I had been hospitalized in July 2023 and

did not return to work until September 2023, and although the case was temporarily reassigned to another attorney in my office, this had further delayed the case.

The current deadlines were set by the Honorable Judge Mary Kay Vyskocil on August 8, 2023. ECF No. 68. Pursuant to the current schedule, fact discovery is set to be completed by November 20, 2023, and expert discovery is set to be completed by January 8, 2024.

The parties now respectfully request additional time to complete this discovery due to the complex nature of this case, the number of depositions that still need to be conducted, and the extensive number of experts anticipated.

The parties worked diligently to schedule the deposition of plaintiff Mariko Shinagawa on a date that was mutually agreeable by all parties (especially as the case needed to be covered by a different attorney from Plaintiffs' attorneys' office). Mariko Shinagawa was deposed on August 25, 2023. The parties also had scheduled the deposition of non-party witness Shinya Shinagawa (father of the infant plaintiff and wife of plaintiff Mariko Shinagawa) who Plaintiffs agreed to produce before the Defendants' depositions due to his knowledge of the birth and delivery of the infant plaintiff, on September 8, 2023. Due to the complex nature of the case and technical difficulties with playing recordings exchanged in discovery, his deposition needed to be completed in two sessions on September 8, 2023, and then on October 26, 2023 (in person). Due to the schedules of the parties and attorneys, the parties were unable to schedule an earlier date for his continued deposition.

The parties have scheduled the deposition of Dr. Sandy Lui Bui (a former defendant who is being produced by defendant United States of America). Dr. Bui was the physician in charge of the delivery of infant plaintiff K.D.S. who also participated in some of the postpartum care rendered to plaintiff Mariko Shinagawa. As these topics are the main subject matters of this action, the parties have agreed that Dr. Bui's deposition should take place before the other named defendant medical providers. Dr. Bui's deposition was originally scheduled for November 1, 2023, but due to scheduling conflicts, the parties have rescheduled Dr. Bui's deposition on the next available date for all parties, December 1, 2023.

The parties are also currently in the process of scheduling the depositions of defendants Sarina Aliza Shuster, PA and Shan Fang, R.N. After the depositions of Dr. Bui and/or the depositions of PA Shuster and Nurse Fang, the Plaintiffs will be in a position to determine whether Plaintiffs need to depose additional providers or if Plaintiffs can waive some or all of the remaining fact depositions. With the December holidays, the parties anticipate it will be difficult to complete all remaining depositions at the end of December.

The parties are also requesting additional time for expert discovery due to the sheer number of experts that the parties anticipate will be needed. After the completion of fact discovery, Plaintiffs will need to send all the depositions transcripts of the fact witnesses (once the transcripts are completed) to the experts so they can issue their reports. At the moment Plaintiffs anticipate exchanging the reports of at least 5 experts, which may increase after the completion of fact discovery.

For the reasons outlined above, the parties are requesting an extension of discovery deadlines; however, as this case was reassigned from Judge Vyskocil to Your Honor, we are seeking to extend the deadlines in accordance with Your Honor's Civil Individual Practices and Your Honor's form Civil Case Management Plans and Scheduling Orders. We therefore respectfully request that the deadline to complete all discovery be extended by 135 days, from January 8, 2024, to May 22, 2024, with the following interim deadlines as outlined in the proposed Civil Case Management Plan and Scheduling Order (attached hereto):

- Completion of Fact Depositions – February 2, 2024;
- Plaintiffs' expert reports: March 4, 2024;
- Defendants' expert reports: April 5, 2024;
- All depositions (fact and expert): May 22, 2024.

This is the parties' second request for an extension of these deadlines. We thank the Court for its consideration of this request.

Respectfully submitted,

By: /s/ Christopher M. Nyberg
Christopher M. Nyberg
The Jacob D. Fuchsberg Law Firm
3 Park Avenue, 37th Floor
New York, NY 10016
c.nyberg@fuchsberg.com

CC: Jennifer Ann Jude (via ECF)
Megan E. Verbos (via ECF)